

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1530

By: Morrissette

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5
6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2001, Sections 102, as last amended
9 by Section 2, Chapter 257, O.S.L. 2009 and 103, as
10 last amended by Section 2, Chapter 98, O.S.L. 2010
11 (61 O.S. Supp. 2010, Sections 102 and 103), which
12 relate to the Public Competitive Bidding Act of 1974;
13 defining term; modifying requirements for the
14 awarding of certain contracts; and providing an
15 effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 61 O.S. 2001, Section 102, as last
18 amended by Section 2, Chapter 257, O.S.L. 2009 (61 O.S. Supp. 2010,
19 Section 102), is amended to read as follows:

20 Section 102. As used in the Public Competitive Bidding Act of
21 1974:

22 1. "Administrator" means the State Construction Administrator
23 of the Construction and Properties Division of the Department of
24 Central Services;

1 2. "Awarding public agency" means the public agency which
2 solicits and receives sealed bids on a particular public
3 construction contract;

4 3. "Best value" means an optional competitive bidding system
5 for objective evaluation and ranking of competitive proposals
6 submitted by bidders, where such competitive proposals are used to
7 identify the lowest price bidder that can best complete the proposed
8 contract with a minimum of deviation from the owner's cost and
9 schedule requirements. Information requested by the awarding public
10 agency and provided by the bidder for evaluation and ranking
11 purposes includes:

12 a. a price proposal, which shall be the basis of a lump
13 sum contract,

14 b. past performance information, which shall be used to
15 determine that the bidder has successfully completed
16 similar work in the past,

17 c. proposed technical work approach, along with a
18 milestone schedule, which shall be used to establish
19 that the bidder has sufficient experience and can
20 identify a logical plan to complete the work,

21 d. risk assessment plan, which shall be used to establish
22 that the bidder can identify project risks and manage
23 those risks to minimize cost and schedule deviation,

- 1 e. additional attributes of the bidder that may be
2 unique, which shall be used to identify additional
3 project value that would be realized by the owner,
4 f. interview with key personnel, which shall be used to
5 establish that the bidder's personnel assigned to the
6 project possess the experience and expertise to plan
7 and manage the work,
8 g. after project award, but prior to contract execution,
9 ability to develop a plan for risk minimization and
10 performance measures to establish performance
11 outcomes, and provide for regular performance
12 reporting to the owner, and
13 h. when applicable, additional technical or operational
14 criteria unique to the project which would be used to
15 establish that the bidder's proposal has addressed
16 such special project requirements;

17 4. "Bidding documents" means the bid notice, instruction to
18 bidders, plans and specifications, bidding form, bidding
19 instructions, general conditions, special conditions and all other
20 written instruments prepared by or on behalf of an awarding public
21 agency for use by prospective bidders on a public construction
22 contract;

23 ~~4.~~ 5. "Chief administrative officer" means an individual
24 responsible for directing the administration of a public agency.

1 The term does not mean one or all of the individuals that make
2 policy for a public agency;

3 ~~5.~~ 6. "Public agency" means the State of Oklahoma, and any
4 county, city, town, school district or other political subdivision
5 of the state, any public trust, any public entity specifically
6 created by the statutes of the State of Oklahoma or as a result of
7 statutory authorization therefor, and any department, agency, board,
8 bureau, commission, committee or authority of any of the foregoing
9 public entities;

10 ~~6.~~ 7. "Public construction contract" or "contract" means any
11 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,
12 awarded by any public agency for the purpose of making any public
13 improvements or constructing any public building or making repairs
14 to or performing maintenance on the same except where the
15 improvements, construction of any building or repairs to the same
16 are improvements or buildings leased to a person or other legal
17 entity exclusively for private and not for public use and no public
18 tax revenues shall be expended on or for the contract unless the
19 public tax revenues used for the project are authorized by a
20 majority of the voters of the applicable public agency voting at an
21 election held for that purpose and the public tax revenues do not
22 exceed twenty-five percent (25%) of the total project cost. The
23 amount of public tax dollars committed to the project will not
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1 exceed a fixed amount established by resolution of the governing
2 body prior to or concurrent with approval of the project;

3 ~~7.~~ 8. "Public improvement" means any beneficial or valuable
4 change or addition, betterment, enhancement or amelioration of or
5 upon any real property, or interest therein, belonging to a public
6 agency, intended to enhance its value, beauty or utility or to adapt
7 it to new or further purposes. The term does not include the direct
8 purchase of materials, equipment or supplies by a public agency, or
9 any personal property, including property as defined in paragraphs 1
10 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma
11 Statutes; and

12 ~~8.~~ 9. "Retainage" means the difference between the amount
13 earned by the contractor on a public construction contract, with the
14 work being accepted by the public agency, and the amount paid on
15 said contract by the public agency.

16 SECTION 2. AMENDATORY 61 O.S. 2001, Section 103, as last
17 amended by Section 2, Chapter 98, O.S.L. 2010 (61 O.S. Supp. 2010,
18 Section 103), is amended to read as follows:

19 Section 103. A. Unless otherwise provided by law, all public
20 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)
21 shall be let and awarded to the lowest responsible or best value
22 bidder, by open competitive bidding after solicitation for sealed
23 bids, in accordance with the provisions of the Public Competitive
24 Bidding Act of 1974. No work shall be commenced until a written

1 contract is executed and all required bonds and insurance have been
2 provided by the contractor to the awarding public agency.

3 B. Except as provided in subsection D of this section, other
4 construction contracts for the purpose of making any public
5 improvements or constructing any public building or making repairs
6 to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be
7 let and awarded to the lowest responsible or best value bidder by
8 receipt of written bids or awarded on the basis of competitive
9 quotes to the lowest responsible qualified contractor. Work may be
10 commenced in accordance with the purchasing policies of the public
11 agency.

12 C. Except as provided in subsection D of this section, other
13 construction contracts for less than Two Thousand Five Hundred
14 Dollars (\$2,500.00) may be negotiated with a qualified contractor.
15 Work may be commenced in accordance with the purchasing policies of
16 the public agency.

17 D. The provisions of this subsection shall apply to public
18 construction for minor maintenance or minor repair work to public
19 school district property. Other construction contracts for less
20 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
21 with a qualified contractor. Construction contracts equal to or
22 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than
23 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the
24 lowest responsible or best value bidder by receipt of written bids.

1 No work shall be commenced on any construction contract until a
2 written contract is executed and proof of insurance has been
3 provided by the contractor to the awarding public agency.

4 E. For award of any contract using a best value evaluation and
5 ranking system, the awarding public agency may, in advance of
6 issuing a bid solicitation, develop a written plan for criteria
7 evaluation and ranking. Ranking criteria and requirements for bid
8 submission information shall be stated in the bid documents. For
9 any contract award to other than the lowest price bidder, the
10 provisions of Section 117 of this title shall apply.

11 SECTION 3. This act shall become effective November 1, 2011.

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